

Message

From: Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]
Sent: 7/28/2020 6:32:09 PM
To: Hurl, Kathy [Hurl.Kathy@epa.gov]
CC: McDavit, Michael W. [Mcdavit.Michael@epa.gov]; Beck, Whitney [beck.whitney@epa.gov]
Subject: RE: urgent request from FDEP

Let's let the district do it, especially since the ASA's office may have other tweaks before RD signs.

Mindy Eisenberg
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From: Hurl, Kathy <Hurl.Kathy@epa.gov>
Sent: Tuesday, July 28, 2020 2:31 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>
Subject: RE: urgent request from FDEP

Okay, thanks. We'll let FDEP know. They want to finalize the MOA. Should we loop back with Stacey since RD James is signing this or let the district do it?

From: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Sent: Tuesday, July 28, 2020 2:12 PM
To: Hurl, Kathy <Hurl.Kathy@epa.gov>
Cc: McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>
Subject: RE: urgent request from FDEP

I don't think I need to run this up the chain. His only real concern was about IRTs and keeping it generic. If FL needs to include text in paragraphs 2 and 3 consistent with their regs (which Dave didn't see), that's fine. Instruments make sense too.

Mindy Eisenberg
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From: Hurl, Kathy <Hurl.Kathy@epa.gov>
Sent: Tuesday, July 28, 2020 1:59 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>
Subject: urgent request from FDEP

Hi,

After discussion with the Corps, FDEP would like to keep paragraphs 2 and 3 of the mitigation language in the state-Corps MOA. With one tweak (change projects to instruments) they are okay with the paragraph provided by Dave Ross, but would like to keep the paragraphs discussing project boundaries and use of credits.

FDEP wanted to know whether the term "mitigation banking projects" referenced in Section II.E. (see excerpt below) referred to mitigation banking instruments, or whether the term was also intending to address dredge/fill activities (i.e., that would require 404 authorization) in order to implement the required restoration. If the intent of the term is to only cover mitigation instruments, then they are OK with the language.

I am sure you will need to run this up the chain. - Kathy

P.S. I will point out that both of these paragraphs are specific to how FL has written their rules and handbook. Regarding the question about the provided language, the state wanted to be sure that 404 permitting in assumed waters would remain a state permit and not permitted by the Corps. So what was proposed by Dave was:

VI. COORDINATION OF MITIGATION BANKING

A. Mitigation Bank Instruments and In-Lieu Fee Program Agreements

Mitigation banking instruments and in-lieu fee program agreements shall be processed by the Corps in accordance with 40 C.F.R. Part 230, including any requirements for review by an Interagency Review Team (IRT). For those where service areas rather than discrete projects provide state-approved credits, the Corps shall verify that the IRT is a member of the IRT.

B. Permits for Mitigation Bank and In-Lieu Fee Projects

With respect to permits for mitigation banks and in-lieu fee projects issued after the effective date of assumption, the boundary of the mitigation bank or of a project under an in-lieu fee program (as distinct from the service area) will be the project boundary for purposes of Section II.A., above, for authorization of discharge of dredged or fill material.

C. Use of Credits from Corps Approved Mitigation Banks for State 404 Permits

DEP may approve the use of credits from a Corps-approved mitigation bank as in-lieu fee projects to provide compensatory mitigation for projects under the State 404 Program, as long as the use of credits is consistent with the approved mitigation banking instruments or in-lieu fee agreements. DEP and the Corps agree that mitigation banking projects shall be subject to review according to procedures established in 40 C.F.R. Part 230, Subpart J. Mitigation banking instruments and in-lieu fee program agreements shall be processed by the Corps in accordance with 40 C.F.R. Part 230, Subpart J. DEP may as chair any applicable interagency coordination effort.

The proposal is:

I. COORDINATION OF MITIGATION BANKING

A. DEP and the Corps agree that mitigation banking instruments shall be subject to review according to procedures established in 40 C.F.R. Part 230, Subpart J. Mitigation banking instruments and in-lieu fee program instruments shall be processed by the Corps in accordance with 40 C.F.R. Part 230, Subpart J. DEP may co-chair any applicable interagency coordination effort.

B. Permits for Mitigation Bank and In-Lieu Fee Projects

With respect to permits for mitigation banks and in-lieu fee projects issued after the effective date of assumption, the boundary of the mitigation bank or of a project under an in-lieu fee program (as distinct from the service area) will be the project boundary for purposes of Section II.A., above, for authorization of discharge of dredged or fill material.

C. Use of Credits from Corps Approved Mitigation Banks for State 404 Permits

DEP may approve the use of credits from a Corps-approved mitigation bank or in-lieu fee program to provide compensatory mitigation for permits issued under the State 404 Program, as long as the use of credits is consistent with the approved mitigation banking instrument or in-lieu fee instrument. DEP and the Corps agree that mitigation banking projects shall be subject to review according to procedures established in 40 C.F.R. Part 230, Subpart J. Mitigation banking instruments and in-lieu fee program instruments shall be processed by the Corps in accordance with 40 C.F.R. Part 230, Subpart J. DEP may co-chair any applicable interagency coordination effort.

Respectfully,

Kathy Hurlb
Clean Water Act 404(g) – U.S. EPA Lead
Office of Wetlands, Oceans, and Watersheds
E-mail: Hurlb.Kathy@epa.gov
Phone: 202-566-1269

Currently working remotely during COVID-19; please call

Ex. 6 Personal Privacy (PP)